IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3086 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MINUBHAI L PATEL

Versus

THEMIS PHARMACEUTICALS

Appearance:

1. Special Civil Application No. 3086 of 1993

MR PRABHAKAR UPADHYAY, Advocate

for MR MUKESH H RATHOD for Petitioner No. 1-10

Ms. SMITA PATEL, Advocate for

NANAVATI & NANAVATI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI

Date of decision: 22/09/2004

ORAL JUDGEMENT

#. In this petition, which has been preferred under

Article 227 of the Constitution of India, the petitioners challenge the order dated 8th February, 1993 rejecting the application exh. 10 which was made by the petitioners in the Approval Application No. 20 of 1990 for deciding the four suggested issues first.

#. It appears from the record that the petitioners were workmen of the respondent-Company and they came to be dismissed from service on 3.10.'90 in respect of the incident that is alleged to have taken place on 20th September, 1990, wherein the Security Officer and the Administrative Manager of the Company are said to have been attacked by the workmen. At the time of dismissal, a reference being Reference No. 34 of 1990 was pending in respect of certain general demands before the Labour Court, in which the petitioners were the concerned workmen. This is why the respondent-Company filed Approval Application No. 2 of 1990 under Section 33(2)(b) of the Industrial Disputes Act, 1947. It appears that the petitioners filed their reply exh. 6 to that application contesting the application on merits. The respondent-Company gave application exh. 19 on 8.7.'91, requesting for an adjournment for the purpose of producing four witnesses named in that application. That application came to be allowed. Thereafter, application exh. 10 was made by the petitioners raising certain preliminary issues against the maintainability of the approval application.

#. The Labour Court in an elaborate order held that, it was not possible to decide any of the suggested preliminary issues without recording the evidence. Referring to the nature of the controversy, however, the Labour Court held that it was necessary to allow both the sides to adduce evidence. It was held that the suggested issues were not pure questions of law, but were mixed questions of law and facts and could not be decided without taking into consideration the evidence that may be adduced by the rival parties, having regard to the nature of controversy reflected from the approval application and the reply exh. 6 given by the petitioners. The application for framing preliminary issues was, therefore, rejected.

#. It was strongly contended on behalf of the petitioners that the Labour Court had no jurisdiction to record evidence in an application for approval made under Section 33(2)(b) of the Act, and therefore, the preliminary issues should have been decided before giving an opportunity to the respondent-Company to adduce evidence. The learned counsel appearing for the

respondent-Company, on the other hand, contended that the Tribunal was perfectly within its jurisdiction in allowing the parties to lead evidence and in refusing to frame preliminary issues on the ground that the issues could be decided only after recording of evidence.

#. The Labour Court was not bound to frame the preliminary issues, merely because, an application was made by the petitioners. It was within the jurisdiction of the Labour Court to hold that the issues suggested could not be decided without allowing both the parties to lead evidence having regard to the nature of the controversy arising before it. There is no warrant for holding that the Tribunal while considering approval application under Section 33(2)(b) cannot record evidence.The Tribunal while considering such application has to examine whether a proper domestic inquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held; whether prima facie case for dismissal based on legal evidence adduced before the domestic tribunal was made out; whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimize the employee; whether the employer had paid or offered to pay wages for one month to the employee and whether the employer had simultaneously or within such reasonably short time, as to form part of the same transaction, applied to the authority before which the main industrial dispute is pending for approval of the action taken by him. [See the decision of the Supreme Court in Lalla Ram Vs. Management of D.C.M. Chemical Works Ltd., A.I.R. 1978 SC 1004].

#. In para-12 of the judgment in Lalla Ram [supra], the Supreme Court, in terms, held that if the domestic inquiry suffers from any defect or infirmity, labour authority will have to find out on its own assessment of the evidence adduced before it whether there was justification for dismissal and if it so finds, it will grant approval of the order of dismissal which would also relate back to the date when the order was passed provided the employer had objected or ordered to pay wages for one month to the employee and the employer had within time indicated applied to the authority before which the main industrial dispute is pending for approval of the action taken by him.

#. It is, thus, clear that the Labour Authority can allow parties to adduce evidence before it to decide whether there was justification for dismissal for the

purpose of granting approval under Section 33(2)(b) of the Act. In this view of the matter, there is absolutely no warrant for interfering with the impugned decision of the Labour Court, which has been validly rendered in lawful exercise of its jurisdiction. The petition is, therefore, rejected. Rule is discharged with no order as to costs. Interim relief stands vacated.

[R.K. ABICHANDANI, J.]

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